United Nations A/HRC/37/NGO/192

General Assembly

Distr.: General
5 March 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Amuta for NGO Responsibility, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[28 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-03385(E)
1803385

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Amuta for NGO Responsibility

Setting the Record Straight on Detention of Palestinian Minors

Palestinian minors are unfortunately involved in a wide range of offences including murder, attempted murder, and illegal possession of weapons. Key contributing factors are incitement by the Palestinian Authority and recognized terror groups, recruiting of children from the earliest of ages to engage in conflict, glorification of violence and "marytrs", and large monthly payments (that increase based on the severity of the crime) by the Palestinian Authority to prisoners and their families.

A debate that focuses exclusively on Israel, but ignores violent crimes and their proximate causes, encourages impunity and emboldens the exploitation of children by Palestinian actors. It is highly disturbing that UN officials, **notably Special Rapporteur Michael Lynk** and **José Antonio Guevara Bermúdez**, Chair-Rapporteur of the Working Group on Arbitrary Detention, continue to ignore these factors and promote falsehoods regarding the Israeli justice system.

Sources for false claims relating to child dentention:

- Allegations of mistreatment of Palestinian children in detention originate with radical non-governmental organizations (NGOs) that seek to marginalize Israel through BDS (boycotts, divestment, and sanctions) initiatives. A number of these groups are closely linked to the Popular Front for the Liberation of Palestine (PFLP)– listed as a terrorist organization by the United States of America, EU, United Kingdom of Great Britain and Northern Ireland and Canada.
- These organizations publish misleading and distorted reports that are adopted by UN officials and agencies, and included in reports authored by OHCHR, OCHA, and UNICEF. These inaccuracies and unverified claims are then laundered through a variety of additional publications, lending them prominence and credibility. At least one of these organizations has remarked that such efforts would allow the NGO to obtain funding from UN agencies and donor governments.
- For instance, many of the NGOs partner with UN agencies in the West Bank, providing claims that are repeated in UN "Situation Reports" and other publications. UN agencies repeat these claims without verification, even when those claims originate with terror-linked organizations.
- At the time these claims of mistreatment were made and adopted by UNICEF, for instance, one of these NGOs had at least one PFLP "leader" on staff (according to a PFLP announcement).
- In many instances, criticisms of Israeli criminal justice practices lack any legal comparison, contradict international law, and apply a unique and specific standard for Israel alone.

Military courts and domestic law:

- In accordance with international law and Article 66 of the Fourth Geneva Convention, Israel is mandated to establish military courts as part of its obligation to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety."
- Israel is also prevented from extending its domestic legal system over Palestinian citizens of the West Bank. (Hague Regulations Article 43). If Israel were to do so, these same organizations would claim that Israel is illegally annexing the territory.
- As a result of the Oslo Accords, almost all crimes committed by Palestinian minors are under the jurisdiction of the Palestinian Authority. The military courts only have jurisdiction over security offences and limited criminal offences, carried out in Area C.
- This context, which goes unmentioned by NGOs, skews statistics on detention and criminal justice.

Comparative statistics of minors in detention:

- In the absence of any comparative statistics or factual context the average number of prisoners held at any time is an irrelevant statistic.
- In contrast to NGO claims, IDF statistics show that, since 2013 (during a time of heightened violence), between 800-1,000 Palestinian minors are arrested annually in areas under Israeli control. Of those arrested, only 450-505 Palestinian

minors are prosecuted. In other words, on average, out of a population of one million minors (according to the Palestinian Central Bureau of Statistics), less than 85 Palestinian minors are arrested each month, and less than half of them are actually prosecuted.

- In comparison, nearly 90,000 minors aged 10-17 were arrested in England and Wales between April 2015-March 2016, an average of approximately 7,500 each month. Adjusted for population, the rate of arrests of minors in England and Wales is 5.5 times higher than the West Bank, even though it is not in an armed conflict situation.

Israeli military courts established per legal requirements and with consideration of minors:

- Israeli law enforcement regarding Palestinian minors meets all the requirements of "due process," the Convention on the Rights of the Child and Article 68 of the Fourth Geneva Convention.
- The rules of evidence applied by the Military Courts are the same as the rules of evidence applied in the Israeli domestic criminal justice system.
- The rights afforded to suspects and defendants by Israeli law meet all the relevant standards and include:
    - The parents of a minor must be informed of his arrest.
    - A suspect has the right to consult with counsel before being interrogated and this must be explained to the minor in language that he understands.
    - Before interrogating a minor, a police officer must notify the suspect's parents of the intention to interrogate him.
    - The trials of minors are conducted before specially trained and certified juvenile judges.
    - The parents of minors have special standing before the court.
    - Military courts conduct the hearings of minors *in camera*.
    - Before handing down a sentence, the court must take into account, inter alia, the age of the minor.
    - Special statutes of limitations that apply only to the prosecution of minors.
    - The rules of procedure applied by the Military courts are almost exactly the same as the rules of procedure applied in the Israeli domestic criminal justice system.
    - The defendant has the right to be represented by counsel of his choice.
    - While International Law does not require the creation of an Appeals Court, such a court has existed in the West Bank since 1989. Decisions of the Court of First Instance are appealable by right.

Nighttime arrests:

- The overwhelming majority of Palestinian minors arrested during nighttime arrests are resident in area A or B of the West Bank (as defined in the Oslo Peace Accords). In these areas there is no permanent Israeli presence. IDF entry into these areas often results in widespread confrontations by Palestinian armed groups. Accordingly, these arrests are carried out under the cover of dark in order to minimize the potential for violence.
- The recommendation that children must not be arrested at night has no basis in domestic or international law and simply advocates applying a special standard only to Israel.

Age of criminal responsibility:

- The age of criminal responsibility in the West Bank according to the Israeli military law is 12. This is the same age that Israeli domestic law applies to its own citizens.
- The minimum age of criminal responsibility in the UK is 10.

The Amuta for NGO Responsibility is available to brief Member States and UN officials on juvenile justice issues in Israel and the West Bank.[1]

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[1] For more information, see NGO Monitor reports: "UNICEF and its NGO Working Group: Failing Children"; "No Way to Represent a Child: Defense for Children International – Palestine's Distortions of the Israeli Justice System"; "The Origins of 'No Way to Treat a Child'"; "Initial Analysis of B'Tselem/HaMoked Report on Children's Detention in Jerusalem"; "Watchlist: Human Rights Watch Leads Effort to Promote Impunity for Palestinian Terrorists"; "Addameer: The PFLP's Network's Prisoner Advocacy Wing"; "Military Court Watch: Inventing Legal Standards to Attack the IDF".